

Amend 2 Cal. Code Regs. Section 18704.1 to read:

~~§ 18704.1. Determining When A Public Official is Making a Governmental Decision.~~

Consultant, Public Official Who Manages Public Investments:Definitions.

~~(a) A public official "makes a governmental decision," except as provided in Regulation 18704.4, when the official, acting within the authority of his or her office or position:~~

~~(1) Votes on a matter;~~

~~(2) Appoints a person;~~

~~(3) Obligates or commits his or her agency to any course of action;~~

~~(4) Enters into any contractual agreement on behalf of his or her agency;~~

~~(5) Determines not to act, within the meaning of subdivisions (a)(1), (a)(2), (a)(3), or (a)(4), unless such determination is made because of his or her financial interest. When the determination not to act occurs because of the official's financial interest, the official's determination may be accompanied by an oral or written disclosure of the financial interest.~~

~~(b) When an official with a disqualifying conflict of interest abstains from making a governmental decision in an open session of the agency and the official remains on the dais or in his or her designated seat during deliberations of the governmental decision in which he or she is disqualified, his or her presence shall not be counted toward achieving a quorum.~~

~~(c) During a closed meeting of the agency, a disqualified official shall not be present when the decision is considered or knowingly obtain or review a recording or any other nonpublic information regarding the governmental decision.~~

~~(d) Notwithstanding subdivision (a) of this regulation, to determine if a public official who holds an office specified in Section 87200 is making, participating in making, or using or attempting to use his or her official position to influence a governmental decision relating to an agenda item which is noticed for a meeting subject to the provisions of the Bagley Keene Act (Section 11120 et seq.) or the Brown Act (Section 54950 et seq.) apply Regulations 18704.1(a)(1)-(a)(4), 18704.2, 18704.3, 18704.4, and 18704.5.~~

~~Comment: Nothing in this section authorizes or prohibits an agency by local rule or custom from requiring a disqualified member to step down from the dais and/or leave the chambers.~~

1 (a) “Consultant” means an individual who, pursuant to a contract with a state or local
2 government agency:

3 (1) Makes a governmental decision whether to:

4 (A) Approve a rate, rule, or regulation;

5 (B) Adopt or enforce a law;

6 (C) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval,
7 order, or similar authorization or entitlement;

8 (D) Authorize the agency to enter into, modify, or renew a contract provided it is the type
9 of contract that requires agency approval;

10 (E) Grant agency approval to a contract that requires agency approval and to which the
11 agency is a party, or to the specifications for such a contract;

12 (F) Grant agency approval to a plan, design, report, study, or similar item;

13 (G) Adopt, or grant agency approval of, policies, standards, or guidelines for the agency,
14 or for any subdivision thereof; or

15 (2) Serves in a staff capacity with the agency and in that capacity participates in making a
16 governmental decision as defined in Regulation 18704(a) or performs the same or substantially
17 all the same duties for the agency that would otherwise be performed by an individual holding a
18 position specified in the agency’s Conflict of Interest Code under Section 87302.

19 (b) For purposes of Section 87200, the following definitions apply:

20 (1) “Other public officials who manage public investments” means:

21 (A) Members of boards and commissions, including pension and retirement boards or
22 commissions, or of committees thereof, who exercise responsibility for the management of
23 public investments;

24 (B) High-level officers and employees of public agencies who exercise primary
25 responsibility for the management of public investments, such as chief or principal investment
26 officers or chief financial managers. This category shall not include officers and employees who
27 work under the supervision of the chief or principal investment officers or the chief financial
28 managers; and

1 (C) Individuals who, pursuant to a contract with a state or local government agency,
2 perform the same or substantially all the same functions that would otherwise be performed by
3 the public officials described in subdivision (b)(1)(B) above.

4 (c) “Public investments” means the investment of public moneys in real estate, securities,
5 or other economic interests for the production of revenue or other financial return.

6 (d) “Public moneys” means all moneys belonging to, received by, or held by, the state, or
7 any city, county, town, district, or public agency therein, or by an officer thereof acting in his or
8 her official capacity, and includes the proceeds of all bonds and other evidences of indebtedness,
9 trust funds held by public pension and retirement systems, deferred compensation funds held for
10 investment by public agencies, and public moneys held by a financial institution under a trust
11 indenture to which a public agency is a party.

12 (e) “Management of public investments” means the following nonministerial functions:
13 directing the investment of public moneys; formulating or approving investment policies;
14 approving or establishing guidelines for asset allocations; or approving investment transactions.

15 Comment: In limited circumstances, the members of a nonprofit organization may be “public
16 officials.” (In re Siegel (1977) 3 FPPC Ops. 62.)

17 Note: Authority cited: Section 83112, Government Code. Reference: Sections ~~81002, 81003,~~
18 ~~82019, 82048, 87100, 87101, 87105 and 87200~~ and 87302, Government Code.